

**CRIMINAL SALE OF MARIHUANA
IN THE SECOND DEGREE
(More than 4 ounces, or sale to a person less than 18)
Penal Law § 221.50
(Committed on or after June 10, 1995)**

The (specify) count is Criminal Sale of Marihuana in the Second Degree.

Under our law, a person is guilty of Criminal Sale of Marihuana in the Second Degree when that person

Select appropriate alternative:

knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana and the preparations, compounds, mixtures, or substances are of an aggregate weight of more than four ounces,

or

knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana to a person less than eighteen years of age.

The following terms used in that definition have a special meaning:

SELL means to sell, exchange, give or dispose of to another [or to offer or agree to do the same].¹

A person KNOWINGLY sells a substance containing marihuana when that person is aware that he or she is selling a substance containing marihuana.²

¹See Penal Law § 220.00(1).

²See Penal Law § 15.05(2).

[Add if appropriate:

It is not a defense to this charge that the seller did not know that the person to whom he or she was selling the substance was less than eighteen years of age, or that the seller believed that such person was eighteen years of age or more.^{3]}

A person UNLAWFULLY sells a substance containing marihuana when that person has no legal right to sell it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to sell marihuana.

[AGGREGATE WEIGHT refers to the weight of the substance which contains the marihuana, irrespective of the amount of the marihuana actually in the substance.^{5]}

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold one or more preparations, compounds, mixtures or substances containing marihuana;
2. That the defendant did so knowingly and unlawfully;
and

Select appropriate alternative:

1. That, in the aggregate, the substance weighed more than four ounces.

³See Penal Law § 15.20(3).

⁴See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).

⁵ See *People v. Mendoza*, 81 N.Y.2d 963, 965 (1993).

or

3. That the defendant sold the substance to a to a person less than eighteen years of age.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.